

UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
PORTLAND DIVISION

DAVID MCDONALD,

Plaintiff,

v.

ONPOINT COMMUNITY CREDIT  
UNION, et al.,

Defendant.

Case No. 3:16-cv-01649-YY

FINDINGS AND  
RECOMMENDATIONS

YOU, Magistrate Judge:

Defendant Equifax has filed a Motion for Sanctions (ECF #59) due to plaintiff's failure to produce medical documents in a timely manner. The motion should be DENIED.

Plaintiff is approximately 71 years old and lives in Chula Vista, California. He had a series of heart attacks in May. In late May 2017, plaintiff (who had previously been represented only by local counsel) wisely enlisted the help of San Diego counsel, who have been admitted *pro hac vice*. At the hearing on the motion for sanctions, the San Diego attorneys represented that they physically went to plaintiff's garage in Southern California, located his medical records (some of which date back to the 1990s), scanned them, classified them, and submitted them to opposing counsel. They also contacted approximately five or six hospitals to obtain additional

records. Plaintiff has adequately explained the delay in producing these medical records, the last of which were produced in early July 2017.

Defendants acknowledge that they have received all of the medical records they have requested. In a separate motion, this court granted defendants' request to reopen plaintiff's deposition to inquire about the newly discovered medical records. The court also ordered that plaintiff shall incur the expenses for this deposition. Under these circumstances, I would not exercise my discretion to impose sanctions, including dismissal and attorneys' fees as requested by Equifax. Accordingly, my recommendation is that the Motion for Sanctions (ECF #59) is DENIED.

#### **SCHEDULING ORDER**

These Findings and Recommendations will be referred to a district judge. Objections, if any, are due Friday, August 18, 2017. If no objections are filed, then the Findings and Recommendations will go under advisement on that date.

If objections are filed, then a response is due within 14 days after being served with a copy of the objections. When the response is due or filed, whichever date is earlier, the Findings and Recommendations will go under advisement.

#### **NOTICE**

These Findings and Recommendations are not an order that is immediately appealable to the Ninth Circuit Court of Appeals. Any Notice of Appeal pursuant to Rule 4(a)(1), Federal Rules of Appellate Procedure, should not be filed until entry of a judgment.

DATED August 4, 2017.

/s/ Youlee Yim You  
\_\_\_\_\_  
Youlee Yim You  
United States Magistrate Judge